

Commission on Victims in the Courts  
**Friday, June 20, 2014**  
10:00 a.m. to 12:00 p.m.  
State Courts Building  
1501 W. Washington, Phoenix, AZ 85007  
Conference Room 119 A/B

**APPROVED 10/3/14**

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**Present:** Judge Ronald Reinstein, Chair; Timothy Agan, Michael Breeze, , Shelly Corzo-Schafer, Sydney Davis, Judge Timothy Dickerson-*telephonically*, Karen Duffy-*telephonically*, Kirstin Flores, Leslie James, Dan Levey, Keli Luther, Judge Evelyn Marez, Jim Markey, Chief Jerald Monahan, Pam Moreton, William Owsley, Karyn Rasile, Judge Sally Simmons-*telephonically*, Dimple Ann Smith, Judge Richard Weiss, Judge Joseph Welty- *by proxy Joseph Kreamer*, Chief Cindy Winn-*telephonically*

**Absent/Excused:** Judge Peter Cahill, Judge Elizabeth Finn, Michael Lessler, and Elizabeth Ortiz

**Presenters/Guests:** Vince Figarelli, Crime Laboratory Superintendent

**Staff:** Carol Mitchell, AOC; Kelly Gray, AOC

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**I. Regular Business**

**A. Welcome and Opening Remarks**

The June 20, 2014 meeting of the Commission on Victims in the Courts was called to order by the Chair, the Honorable Ronald Reinstein, at 10:04 a.m.

The Chair asked for member roll call and introductions of staff and guests. The Chair introduced the members recently appointed to this commission; Mr. Tim Agan and Mr. William W. Owsley from the Office of the Legal Advocate, and Chief Jerald Monahan of the Prescott Police Department. He congratulated members reappointed to additional terms; Judge Joseph Welty, Mr. Michael Breeze, Ms. Karen Duffy, Judge Evelyn Marez, and Ms. Sydney Davis.

**B. Emergency Evacuation Procedures**

Ms. Carol Mitchell explained the emergency procedures for the building including where to exit the AOC Building, procedures for evacuation, where to regroup, and if assistance is needed in the event of an emergency.

If you know you will need assistance evacuating in the event of an emergency, please contact Carol Mitchell at [cmitchell@courts.az.gov](mailto:cmitchell@courts.az.gov) or by telephone at (602) 452-3965.

### **C. Approval of February 21, 2014 Minutes**

The draft minutes from the February 21, 2014, meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes; there were none.

- Motion was called by Judge Sally Simmons for the approval of minutes; Ms. Sydney Davis seconded; motion passed unanimously.

## **II. New Business**

### **A. Criminal Rule 41, Form 4(a)**

Ms. Kirstin Flores from the Arizona Attorney General's Office discussed a proposed change to Ariz. R. Crim. P. 41, Form 4(a), the "Release Questionnaire." Form 4(a) is to be completed by law enforcement and is used in the initial appearance for the purposes described in Ariz. R. Crim. P. 4.1 – 4.2.

The Attorney General's Victims' Rights Advisory Committee (VRAC) recently discussed the victims' rights of child victims who are in the custody of the Department of Child Safety (DCS). It was proposed that further protection of child victims' rights could be served by adding a question/checkbox to Form 4(a) which indicates if DCS is involved in the case, as law enforcement may not be present at the initial appearance. This proposed question/checkbox will be filled out by law enforcement as part of the "Release Questionnaire," limiting the possibility that the non-offending parent/guardian will answer this question incorrectly when prompted by the judge at the hearing. It was argued that by knowing that DCS is involved in the case gives more information for the initial appearance judicial officer, and further protects child victims by bringing the seriousness of the offense to the attention of the judge.

It was pointed out that there would be implications for law enforcement, and that this proposed change/addition to Form 4(a) must be assessed by various AOC committees and other law enforcement committees/groups to ensure all considerations are discussed. Further, there was discussion about where this proposed question/checkbox would be on the form, if all counties used this form currently, if this proposed question/checkbox would be related to the charge at hand only, and potential issues with contradictory court orders between various courts. It was suggested that this change/addition to Form 4(a) be proposed with the unrelated changes to Ariz. R. Crim. P. 41, Form 4(b), which may be submitted as a rule change through the AOC.

- Motion was called by Ms. Kristin Flores to approve the concept of adding a question/check to Ariz. R. Crim. P. 41, Form 4(a). The details of proposed

question/checkbox will be presented to COVIC at the October 3, 2014 meeting after Ms. Flores meets with VRAC. An additional motion approving/denying the addition of the question/checkbox is required at the October 2014 meeting. Mr. Michael Breeze seconded; motion passed unanimously.

## **B. Sexual Assault Awareness**

Chief Jerald Monahan discussed “Start by Believing” campaign and presented additional information.

The *Start by Believing* campaign is a public awareness campaign that focuses on the public response to sexual assault. *Start by Believing* encourages the public to respond to a victim of sexual assault in a more positive way that can aid victims in the path toward justice and healing. The campaign features unique messaging and campaign materials, web and social media outreach, and opportunities for corporate partnership and support. Chief Monahan presented a slide show that powerfully illustrated the issue of sexual assault and highlighted a few of the initiatives that have been launched.

Though *Start by Believing* is a national campaign, Arizona is a leading supporter of the program. In Chinle, Arizona the Hopi, Zuni, Apache, and Navajo Coalitions rented billboard space to spread the word about *Start by Believing*. Apache Junction became the first Arizona city to issue a proclamation to *Start by Believing*. Many other cities followed Apache Junction, and Arizona State University Police Chief and President also launched the campaign. Additionally, in April 2014, in honor of Victims’ Rights Week, Governor Jan Brewer recognized the *Start by Believing* campaign, and the Arizona House of Representatives proclaimed Arizona to be a *Start by Believing* state. The campaign has recently even reached into Sonora, Mexico through a partnership with Nogales, Arizona.

There was discussion regarding the defendants’ rights and point of view. It was pointed out that this initiative does not impact the defendants’ rights as the standards of probable cause, proof beyond a reasonable doubt, and presumption of innocence are still intact. Many cases will still not be prosecuted as there is a lack of evidence, but there is benefit in encouraging a climate of reporting and speeding the recovery of a victim.

Additionally, there was discussion about the Forensic Nurse independent sexual assault exam. It was pointed out that an Arizona county has a process which delays the commencement of an exam. This county is the only participating county that has this process, leading to a higher rate of examination request denials.

Further, Mr. Jim Markey discussed a free training opportunity in Flagstaff for law enforcement. On August 19, 2014 through August 22, 2014, there will be a multidisciplinary sexual assault investigation class at which he and Karyn Rasile will be presenting. There will be discussions about human trafficking, forensics, prosecution, etc. Please contact an Arizona Peace Officer Standards and Training

(POST) representative for additional information at (602) 223-2514 or <https://post.az.gov/>.

### **C. DNA Databases: CODIS and Rapid DNA**

Mr. Vince Figarelli, Superintendent with the Arizona Department of Public Safety, discussed CODIS and Rapid DNA.

The Combined DNA Index System (CODIS) is a database of DNA profiles of offenders, forensic samples from crime scenes, and missing person related samples that is useful for linking unsolved cases, providing investigative leads in unsolved cases, and providing investigative information in missing person cases. CODIS is a combination of several databases including National DNA Index System (NDIS), State DNA Index System (SDIS), and Local DNA Index System (LDIS). CODIS searches samples collected from relatives of missing persons, missing persons, unidentified human remains, convicted offenders/arrestees (all convicted felons, people arrested of qualifying offenses in Arizona and adjudicated juveniles), and forensic unknowns (non-suspect cases and cases with suspects). Samples NOT searched include victims, investigative leads, consensual sex partners, and known samples.

Arizona began collecting database samples from Convicted Sex Offenders in 1993. Since 2004 Arizona has been collecting DNA samples from all convicted felons pursuant to ARS code §13-610. Since 2008, in addition to collecting from all convicted felons, Arizona has been collecting DNA samples from certain violent arrestees as well. The possibility of solving unsolved crimes increases due to evolving technology can help victims of crime receive justice. As technology evolves, smaller and smaller samples are required to develop DNA profiles, and the length of time it takes to develop that profile is shortened.

The Arizona DPS Rapid DNA Program ("the Program") is an initiative developed by the Department of Public Safety (DPS) that will dramatically decrease the length of time required to develop a DNA profile for police investigatory purposes.

The Program has three (3) primary uses including providing investigative leads to law enforcement from forensic samples, identification of victims, and identification of apprehended individuals (comparison to forensic unknowns). The Program will not allow upload of arrestee and convicted offender profiles into CODIS or other databases.

The IntegenX RapidHit 200 machines will be located in three (3) DPS laboratories in Phoenix, Tucson, and Flagstaff. The rapid DNA machine generates a DNA profile in about 90 minutes. To begin with, only single source sampling will be available (blood or saliva).

Issues were raised regarding the collection, storage, and searching of victim DNA in the investigative process. Questions were raised about any release statements/documents signed by a victim for collection of DNA during the

investigation of a crime, and if the permission granted allows for storage and searching of the DNA collected in the future. It was pointed out that some Arizona police departments collect and store victim DNA for the purpose of identifying suspects in future cases (“victim today, offender tomorrow” type scenarios). Members of this Commission raised concerns about the legality of this procedure in relation to Fourth Amendment rights. Ms. Dimple Smith agreed to further investigate this issue with the police department(s) in question using this practice.

#### **D. Parent Representation**

Mr. William Owsley, from the Office of the Legal Advocate, discussed the proposed Attorney Standards for Parent Representation rule changes.

The Attorney Standards for Parent Representation (the Standards) is a set of proposed guidelines developed through a statewide subcommittee of the Court Improvement Program Advisory Workgroup that all attorneys who represent parents and attorneys appointed as guardian ad litem for parents in dependency cases in Arizona must adhere to. In developing the Standards, the workgroup considered input from system partners in attendance at the *Hearing Their Voices – A Discussion About Parent Representation Symposium* that was held September 26, 2013, best practices within Arizona, and well-accepted standards developed by nationally recognized organizations.

The Committee on Juvenile Courts (COJC) approved the Standards in late May 2014, and the Standards are being disseminated for comment until 5:00 p.m. on Thursday, July 31, 2014. Mr. Owsley invited this Commission to make comments at [www.azcip.org](http://www.azcip.org) before the comment period deadline.

After the comment period expires the COJC will bring the Standards to the Arizona Judicial Council (AJC) in October 2014 for final approval.

#### **E. Legislative Review**

The Chair reviewed the documentation provided by Ms. Amy Love, Legislative Liaison for the AOC and highlighted a few pieces of legislation impacting victims. Please click [here](#) to review the legislative materials.

#### **F. Victim Identification Rule Update**

The Chair discussed amendments to Ariz. R. Crim. P. 39(b) which will be implemented in the near future.

Recently the Arizona Legislature passed House Bill 2454 (affecting A.R.S. § 13-4434) which further defined what identifying information and locating information a victim has the right not to disclose during testimony unless he/she consents, or the court

orders disclosure. This legislation defines “identifying information” as a victim’s date of birth, social security number and official state or government issued driver license or identification number, and defines “locating information” as the victim’s address, telephone number, e-mail address, and place of employment. These changes are to become effective July 24, 2014.

Ariz. R. Crim. P. 39 substantively mirrors A.R.S. §13-4434, and an amendment to the Arizona Rules of Criminal Procedure is required. The Arizona Supreme Court amended Ariz. R. Crim. P. 39(b)(10) on an expedited basis to include the newly protected pieces of victim information. The Arizona Supreme Court also ordered that this matter be open for comment until September 26, 2014.

Various legal groups/organizations disagree with the amendment to Ariz. R. Crim. P. 39. Concerns were raised about necessity of having the date of birth of a victim for identification purposes in the event of a conflict of interest and/or prior knowledge situations arise (information gained about a victim in a previous privileged context). In response, the county attorney offices indicated that they could perform the required checks; however, the defense bar is opposed to this solution. Defense groups in particular were uncertain about the ability of the county attorney to properly perform these checks as the county attorney offices have limited information. The Chair indicated that the comment period is still open, so additional developments may be forthcoming.

### **III. Call to Public/Adjournment**

#### **A. Good of the Order/Call to the Public**

The Chair made a Call to the Public; there were no comments or questions by the public.

#### **B. Adjournment**

The June 20, 2014 meeting of the Commission on Victims in the Courts was adjourned by the Chair, the Honorable Ronald Reinstein, at 11:48 a.m.

#### **C. Next Committee Meeting Date:**

Friday, October 3, 2014  
10:00 a.m. to 12:00 p.m.  
State Courts Building, Room 119 A/B  
1501 W. Washington St., Phoenix, AZ 85007